IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1029 of 2006
Judgement Reserved on 11.4.2007.

Date of decision: 20.4.2007

Smt. Manju ..Petitioner

Versus

State of H.P. and others. ….Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge

Whether approved for reporting? Yes.

For the Petitioner: Ms. Pratima Malhotra, Advocate.

For Respondents No 1to 3 Mr.M.S.Chandel, Advocate General, with Mr.R.M.Bisht, DAG

For Respondent No.4 Mr. K.D.Sood, Advocate.

Per Deepak Gupta, J.

The short question which arises for determination in this case is "whether a non-tribal woman, who marries a person belonging to a scheduled tribe is entitled to the benefits of reservation available to the members of scheduled tribes on account of her marriage".

The facts in brief are that the petitioner who by birth does not belong to the scheduled tribes married one Sh. Arbind who is a member of a scheduled tribe. She contested the election for the post of Pardhan, Gram Panchayat Barang, Tehsil Kalpa, District Kinnaur, H.P. This post was reserved for women belonging to the scheduled tribes only. The only other opponent in the election was respondent No.4. The petitioner won the election and thereafter respondent No.4 filed an election petition under Section 163 of the H.P.Panchayati Raj Act. The main ground of challenge was that the petitioner did not belong to the scheduled tribes and therefore, was not eligible to contest the election.

The case of the petitioner before the authorised authority was that she had been issued a certificate by the Deputy Commissioner, Kinnaur, to the effect that she belongs to the scheduled tribes. According to her, she had married her husband who belongs to the scheduled tribe and therefore she acquired the same status as her husband. It was also pleaded that after her marriage, she performed and followed all rites and customs prevalent in the area and has been accepted in the tribe of her husband. The Sub Divisional Magistrate, Kalpa, who is the authorised authority under the H.P.Panchanyati Raj Act, came to the conclusion that the petitioner did not acquire the status of a scheduled tribe on her marriage with her husband and was not entitled to contest the election. The appeal filed by the appellant before the Deputy Commissioner has also been rejected. Hence, the present petition.

We have heard Ms. Pratima Malhotra, learned counsel for the petitioner, Mr. M.S.Chandel, learned Advocate General, for respondents 1 to 3 and Sh. K.D.Sood, learned counsel for respondent No.4.

The main contention of Ms. Pratima Malhotra, is that the petitioner after her marriage to a person belonging to a scheduled tribe has been accepted in his family and has also been accepted in the Biradri of the husband. According to her, any Hindu lady after marriage will acquire the same status as her husband. She has placed reliance on the judgement of the apex Court in ***V.V.Giri v. D.Suri Dora & others AIR 1959 SC 1318***. In our view the said judgement is not at all applicable in the present case. The situation before the apex Court was converse. There it was alleged that respondent who had fought the election as a member of a scheduled tribe was in fact a *Kshtriya*. The apex Court on the basis of the evidence in the case came to the conclusion that the respondent was

always described as belonging to a scheduled tribe and that the documents from 1885 to 1928 showed him to be member of a scheduled tribe. In the documentary evidence relating to the period after the year 1928 the respondent had described himself and his family members as *Kshatriya*. Evidence was also led to the effect that the respondent and his family were celebrating marriages and other festivals as per Hindu rites. It is in this context that the apex Court held that the caste status of a person would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry. This however, does not mean that if the members of the caste accept such a person, then the person so accepted is automatically entitled to the benefits of reservation under article 15(4) and 16(4) of the Constitution of India or any other reservation provided by law.

The question raised before us has been the subject matter of a number of decisions. It is not necessary to refer to all the decisions. The apex Court in ***Valsamma Paul vs. Cochin University & others (1996) 3-Supreme Court Cases -545*** was dealing with the question as to whether a lady who belongs to a non-reserved class and marries into the scheduled castes or scheduled tribes or any Other Backward Classes would be entitled to the benefit of reservation available to such castes, tribes and classes of citizens. The apex Court after dealing with a large number of previous judgments, treatises and articles held as follows :-

> "33. However, the question is : Whether a lady marring a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption or any other voluntary act, ipso facto, becomes entitled to claim reservation under Article 15(4) or 16(4), as the case may be? It is seen that Dalits and Tribes suffered social and economic disabilities recognized by Articles 17 and 15(2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages,

sufferings and restrictions to which the members of the Dalits or Tribes or OBC were subjected and was sought to bring them in the mainstream of the nation's life by providing them opportunities and facilities.

36. The recognition of the appellant as a member of the Latin Catholics would not, therefore, be relevant for the purpose of her entitlement to the reservation under Article 16(4), for the reason that she, as a member of the Forward Caste, had an advantageous start in life and after her completing education and becoming major, married Yesudas; and so, she is not entitled to the facility of reservation given to the Latin Catholics, a Backward Class."

In ***Sobha Hymavathi Devi vs. Setti Gangadhara Swamy and others (2005) 2 SCC 244,*** a three Judge Bench was dealing with a similar question. The contention before the apex Court was as follows :-

"9. What is contended by learned counsel for the appellant is that on the marriage of the appellant with Appala Raju in the customary form of the Bhagatha community, the appellant had been recognized as a member of the Bhagatha community and accepted as such by the members of that community and consequently, the appellant must be taken to have acquired membership of the Bhagatha community……."

The apex Court dealt with the contention thus :-

"9. …….. Even otherwise, we have difficulty in accepting the position that a non-tribal who marries a tribal could claim to contest a seat reserved for tribals. Article 332 of the Constitition speaks of reservation of seats for Scheduled Tribes in Legislative Assemblies. The object is clearly to give representation in the legislature to Scheduled Tribe candidates, considered to be deserving of such special protection. To permit a non-tribal under cover of a marriage to contest such a seat would tend to defeat the very object of such a reservation. The decision of this Court in Valsamma Paul v. Cochin University supports this view. Neither the fact that a non-backward female married a backward male nor the fact that she was recognized by the community thereafter as a member of the backward community, was held to enable a non-backward

to claim reservation in terms of Article 15(4) or 16(4) of the Constitution. Their Lordships after noticing Bhoobum Moyee Debia v. Ram Kishore Acharj Chowdhry and Lullobhoy Bappoobhoy Cassidas Moolchund v. Cassibai held that a woman on marriage becomes a member of the family of her husband and thereby she becomes a member of the caste to which she has moved. The caste rigidity breaks down and would stand as no impediment to her becoming a member of the family to which the husband belongs and to which she gets herself transplanted. Thereafter, this Court noticed that recognition by the community was also important. Even then, this Court categorically laid down that the recognition of a lady as a member of a backward community in view of her marriage would not be relevant for the purpose of entitlement to reservation under Article 16(4) of the Constitution for the reason that she as a member of the forward caste, had an advantageous start in life and a marriage with a male belonging to a backward class would not entitle her to the facility of reservation given to a backward community. The High Court has applied this decision to a seat reserved in an election in terms of Article 332 of the Constitution. We see no reason why principle relating to reservation under Articles 15(4) and 16(4) laid down by this Court should not be extended to the constitutional reservation of a seat for a Scheduled Tribe in the House of the People or under Article 332 in the Legislative Assembly. The said reservations are also constitutional reservations intending to benefit the really underprivileged and not those who come to the class by way of marriage…."

In ***Meera Kanwaria vs. Sunita and others (2006) 1 Supreme Court Cases, 344,*** the lady was a *Rajput* by caste. She married a person belonging to the scheduled caste and on this basis claimed that she was entitled to the benefits of reservation as a scheduled caste and was entitled to contest election for the seat reserved for scheduled caste candidate. The apex Court after reviewing the entire law on the subject held as follows:-

> "24. It is, therefore, beyond any doubt or dispute that a person who is a high-caste Hindu and not subjected to any social or educational backwardness in his life, by reason of marriage alone cannot ipso facto become a member of the Scheduled Caste or the Scheduled Tribe. In the absence of any strict proof he cannot be allowed to defeat the very provisions made by the State for reserving certain seats for disadvantaged people."

In view of the aforesaid law, it is abundantly clear that when a women belonging to a forward caste marries into a scheduled caste or tribe she will not be entitled to the reservation provided for such castes and tribes under the Constitutional and statutory provisions even though she may have been accepted in the family, caste or tribe of her husband. The reason behind this is simple. A person who belongs to the higher or forward class is not subject to social and educational backwardness in life. Such a person receives education and all other social benefits as per the caste to which he or she is born to. This person by reason of marriage alone cannot claim the benefits which are available to persons belonging to the scheduled castes or scheduled tribes. This person has not faced the disadvantages and deprivations faced by persons belonging to the scheduled castes or scheduled tribes and has got married out of his or her own volition. By this voluntary act of marrying outside the caste into a scheduled caste or into a scheduled tribe the lady cannot strive or obtain the benefits to which the members of the caste or tribe of her husband are entitled to. The Constitutional and statutory provisions of reservation are meant to benefit those who have suffered and are underprivileged by reason of the caste or tribe to which they belong. The benefit of these reservations cannot be extended to those persons who enter this class by way of marriage.

Keeping in view the aforesaid discussion, we are of the considered view that there is no merit in the petition, which is accordingly dismissed. No order as to costs.

(Deepak Gupta), J.

April 20, 2007
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(Surinder Singh), J.